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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Nehemiah Kong,

Plaintiff,

v.

Brenda Sue Getty, in individual and
representative capacity as trustee of
the Richard J. Getty Living Trust
Agreement;

Richard A. Getty, in individual and
representative capacity as trustee of
the Richard J. Getty Living Trust
Agreement; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Nehemiah Kong complains of Brenda Sue Getty, in individual and representative capacity as trustee of the Richard J. Getty Living Trust Agreement; Richard A. Getty, in individual and representative capacity as trustee of the Richard J. Getty Living Trust Agreement; and Does 1-10 (“Defendants”) and alleges as follows:

1 **PARTIES:**

2 1. Plaintiff is a California resident with physical disabilities. He is a
3 paraplegic who suffers from Polio. He uses a wheelchair for mobility. He has a
4 specially equipped van with a ramp that deploys out of the passenger side of
5 his van.

6 2. Defendant Brenda Sue Getty, in individual and representative capacity
7 as trustee of the Richard J. Getty Living Trust Agreement, owned the real
8 property located at or about 1619 E. Los Angeles Avenue, Simi Valley,
9 California, in October 2018.

10 3. Defendant Richard A. Getty, in individual and representative capacity
11 as trustee of the Richard J. Getty Living Trust Agreement, owned the real
12 property located at or about 1619 E. Los Angeles Avenue, Simi Valley,
13 California, in October 2018.

14 4. Defendant Brenda Sue Getty, in individual and representative capacity
15 as trustee of the Richard J. Getty Living Trust Agreement, owns the real
16 property located at or about 1619 E. Los Angeles Avenue, Simi Valley,
17 California, currently.

18 5. Defendant Richard A. Getty, in individual and representative capacity
19 as trustee of the Richard J. Getty Living Trust Agreement, owns the real
20 property located at or about 1619 E. Los Angeles Avenue, Simi Valley,
21 California, currently.

22 6. Plaintiff does not know the true names of Defendants, their business
23 capacities, their ownership connection to the property and business, or their
24 relative responsibilities in causing the access violations herein complained of,
25 and alleges a joint venture and common enterprise by all such Defendants.
26 Plaintiff is informed and believes that each of the Defendants herein,
27 including Does 1 through 10, inclusive, is responsible in some capacity for the
28 events herein alleged, or is a necessary party for obtaining appropriate relief.

1 Plaintiff will seek leave to amend when the true names, capacities,
2 connections, and responsibilities of the Defendants and Does 1 through 10,
3 inclusive, are ascertained.

4

5 **JURISDICTION & VENUE:**

6 7. This Court has subject matter jurisdiction over this action pursuant to
7 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
8 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

9 8. Pursuant to supplemental jurisdiction, an attendant and related cause
10 of action, arising from the same nucleus of operative facts and arising out of
11 the same transactions, is also brought under California's Unruh Civil Rights
12 Act, which act expressly incorporates the Americans with Disabilities Act.

13 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
14 founded on the fact that the real property which is the subject of this action is
15 located in this district and that Plaintiff's cause of action arose in this district.

16

17 **FACTUAL ALLEGATIONS:**

18 10. Plaintiff went to the property to shop at Garcia Bakery Panaderia in
19 October 2018.

20 11. Garcia Bakery Panaderia is a facility open to the public, a place of public
21 accommodation, and a business establishment.

22 12. Parking spaces are one of the facilities, privileges, and advantages
23 offered by Defendants to patrons of Garcia Bakery Panaderia.

24 13. Unfortunately, even though there were parking spaces marked and
25 reserved for persons with disabilities, there were no van-accessible parking
26 spaces. The parking space that was ostensibly reserved for persons who drive
27 vans had inaccessible slopes in the parking space.

28 14. There was a curb ramp running into the access aisle that caused slopes

1 greater than 2.1%.

2 15. Two additional parking stalls marked and reserved for persons with
3 disabilities were not designed for vans. One of the parking stalls measured 122
4 inches in width while the access aisle measured about 60 inches in width. This
5 is not van accessible.

6 16. The second parking stall measured 120 inches in width while the access
7 aisle measured 70 inches in width. This is not van accessible.

8 17. Separately, there was a parking lot in the rear of the building. None of
9 the parking spaces in that lot had parking spaces marked and reserved for
10 persons with disabilities.

11 18. On information and belief, plaintiff alleges that there used to be a van-
12 accessible parking space in the parking lots. Unfortunately, the defendants
13 have allowed the parking space to fade or get paved over.

14 19. Currently, there is no compliant parking space marked and reserved for
15 persons with disabilities in the rear parking lot.

16 20. Currently, there are no van-accessible parking spaces marked and
17 reserved for persons with disabilities in either parking lot.

18 21. Defendants have failed to maintain in operable working condition those
19 features of facilities and equipment that are required to be readily accessible to
20 and usable by persons with disabilities at the Subject Property.

21 22. Plaintiff personally encountered these barriers.

22 23. This inaccessible facility denied the plaintiff full and equal access and
24 caused him difficulty, discomfort, and embarrassment.

25 24. Paths of travel are another one of the facilities, privileges, and
26 advantages offered by Defendants to patrons of Garcia Bakery Panaderia.

27 25. Even though the plaintiff did not personally confront the barrier, the
28 walkway leading to the entrance of Garcia Bakery Panaderia has cross slopes
of as much as 4.1%. This is inaccessible to plaintiff.

1 26. Plaintiff plans to return and patronize Garcia Bakery Panaderia but is
2 deterred from visiting until the defendants remove the barriers.

3 27. The defendants have failed to maintain in working and useable
4 conditions those features required to provide ready access to persons with
5 disabilities.

6 28. The barriers identified above are easily removed without much
7 difficulty or expense. They are the types of barriers identified by the
8 Department of Justice as presumably readily achievable to remove and, in fact,
9 these barriers are readily achievable to remove. Moreover, there are numerous
10 alternative accommodations that could be made to provide a greater level of
11 access if complete removal were not achievable.

12 29. For example, there are numerous paint/stripe companies that will come
13 and stripe a level van-accessible parking stall and access aisle and install
14 proper signage on rapid notice, with very modest expense, sometimes as low
15 as \$300 in full compliance with federal and state access standards.

16 30. There are numerous paint/stripe companies that will come and stripe a
17 parking stall and access aisle in the rear parking lot and install proper signage
18 on rapid notice, with very modest expense, sometimes as low as \$300 in full
19 compliance with federal and state access standards.

20 31. Plaintiff is deterred from returning and patronizing Garcia Bakery
21 Panaderia because of his knowledge of the barriers that exist. Plaintiff will,
22 nonetheless, return to assess ongoing compliance with the ADA and will
23 return to patronize Garcia Bakery Panaderia as a customer once the barriers
24 are removed.

25 32. Given obvious and blatant nature of the barriers and violations alleged
26 herein, the plaintiff alleges, on information and belief, that there are other
27 violations and barriers on the site that relate to his disability. Plaintiff will
28 amend the Complaint to provide proper notice regarding the scope of this

lawsuit once he conducts a site inspection. However, please be on notice that the plaintiff seeks to have all barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of plaintiff and against all defendants (42 U.S.C. section 12101, et seq.)

33. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

34. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, *inter alia*, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix "D."
- c. A failure to make alterations in such a manner that, to the

1 maximum extent feasible, the altered portions of the facility are
2 readily accessible to and usable by individuals with disabilities,
3 including individuals who use wheelchairs or to ensure that, to the
4 maximum extent feasible, the path of travel to the altered area and
5 the bathrooms, telephones, and drinking fountains serving the
6 altered area, are readily accessible to and usable by individuals
7 with disabilities. 42 U.S.C. § 12183(a)(2).

8 35. Under the 2010 Standards, access aisles shall be at the same level as the
9 parking spaces they serve. Changes in level are not permitted. 2010 Standards
10 502.4. “Access aisle are required to be nearly level in all directions to provide
11 a surface for wheelchair transfer to and from vehicles.” 2010 Standards §
12 502.4 Advisory. Specifically, built up curb ramps are not permitted to project
13 into access aisles and parking spaces. *Id.* No more than a 1:48 slope is
14 permitted. 2010 Standards § 502.4.

15 36. Here, the failure to provide level van parking is a violation of the law.

16 37. Any business that provides parking spaces must provide accessible
17 parking spaces. 2010 Standards § 208. Under the 2010 Standards, one in
18 every six accessible parking spaces must be van accessible. 2010 Standards §
19 208.2.4.

20 38. Here, the failure to provide an accessible parking space in the rear
21 parking lot is a violation of the ADA.

22 39. Nowhere shall the cross slope of an accessible route exceed 2.1%. 2010
23 Standards § 403.3.

24 40. Here, the slopes along the walkways exceeded the levels allowed by law.

25 41. The Safe Harbor provisions of the 2010 Standards are not applicable
26 here because the conditions challenged in this lawsuit do not comply with the
27 1991 Standards.

28 42. A public accommodation must maintain in operable working condition

1 those features of its facilities and equipment that are required to be readily
 2 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

3 43. Here, the failure to ensure that the accessible facilities were available
 4 and ready to be used by the plaintiff is a violation of the law.

5 44. Given its location and options, plaintiff will continue to desire to
 6 patronize Garcia Bakery Panaderia but he has been and will continue to be
 7 discriminated against due to the lack of accessible facilities and, therefore,
 8 seeks injunctive relief to remove the barriers.

9

10 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
 11 RIGHTS ACT (On behalf of plaintiff and against all defendants) (Cal Civ §
 12 51-53)**

13 45. Plaintiff repleads and incorporates by reference, as if fully set forth
 14 again herein, the allegations contained in all prior paragraphs of this
 15 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
 16 that persons with disabilities are entitled to full and equal accommodations,
 17 advantages, facilities, privileges, or services in all business establishment of
 18 every kind whatsoever within the jurisdiction of the State of California. Cal.
 19 Civ. Code §51(b).

20 46. The Unruh Act provides that a violation of the ADA is a violation of the
 21 Unruh Act. Cal. Civ. Code, § 51(f).

22 47. Defendants’ acts and omissions, as herein alleged, have violated the
 23 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
 24 rights to full and equal use of the accommodations, advantages, facilities,
 25 privileges, or services offered.

26 48. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 27 discomfort or embarrassment for the plaintiff, the defendants are also each
 28 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-

1 (c.).

2
3 **PRAYER:**

4 Wherefore, Plaintiff prays that this Court award damages and provide
5 relief as follows:

6 1. For injunctive relief, compelling Defendants to comply with the
7 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
8 plaintiff is not invoking section 55 of the California Civil Code and is not
9 seeking injunctive relief under the Disabled Persons Act at all.

10 2. Damages under the Unruh Civil Rights Act, which provides for actual
11 damages and a statutory minimum of \$4,000.

12 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
13 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

14
15 Dated: October 30, 2018

CENTER FOR DISABILITY ACCESS

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17 By:
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19
20 Chris Carson, Esq.
Attorney for plaintiff

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